

EXHIBIT 1
part 3 of 5

FE PRISONER: PAROLE CONSIDERATION
 PROPOSED DECISION (BPT §2041)

☒ PAROLE DENIED

If this proposed decision denying parole is approved, the Board will send you a copy of the approved decision, including the reasons for denial of parole, within 30 days of the hearing.

☐ PAROLE GRANTED

Do NOT release pending Decision Review.

A. Base Period of Confinement 180 Months

Case No. _____ Count No. _____ Offense _____

B. Firearm Enhancement + _____ Months

C. Other Crimes Total + 68 Months

Case No. _____ Count No. _____ Offense _____ mos.

Case No. _____ Count No. _____ Offense _____ mos.

Case No. _____ Count No. _____ Offense _____ mos.

D. Total Term = 248 Months

E. Postconviction Credit From 7/31/87 To 9/24/04 - 60 Months
 (Date) (Date)

F. Total Period of Confinement = 188 Months

The period of confinement indicated is a tentative decision proposed by this panel. The decision will be reviewed pursuant to BPT §2041, and, if approved, a copy of the approved decision will be sent to you within 30 days. At that time appropriate pre-prison credits will be applied and a parole release date computed.

You will not engage in any conduct specified in BPT §2451. Such conduct may result in rescission or postponement of your parole date.

If the proposed decision denying or granting parole is disapproved, you will receive a copy of the proposed decision and the reasons for disapproval. You will then receive a copy of the modified decision or will be scheduled for a new hearing, as appropriate.

PANEL HEARING CASE

<i>Susan Fisher</i>	Date <u>9/24/04</u>
<i>Robert Long</i>	Date <u>9/24/04</u>
	Date

BAKER, Fred

CDC NUMBER

C22918

INSTITUTION

CTFS

HEARING DATE

9/24/04

EXHIBIT D

1 Michael Herro, Attorney at Law
SBN: 233749
2 Law Office of Michael Herro
134 Central Ave.
3 Salinas, California 93901
4 Phone and fax (831) 752-0992
5 Attorney for Petitioner

6 SUPERIOR COURT OF CALIFORNIA
7 COUNTY OF MONTEREY
8
9
10

11 In re
12 FRED BAKER,
13 On Habeas Corpus.
14

HC 04990

DECLARATION OF FREDDY FIKES
(B-65105) IN SUPPORT OF THE
AMENDED OR SUPPLEMENTAL
PETITION

15
16 I, FREDDY FIKES, declare as follows:

17 1. I am a residence of the State of California, County of
18 Monterey. I am age 18 and older and not a party to this matter.

19 2. I am familiar with the Board of Parole Hearings' actions
20 regarding the seventh subsequent parole consideration hearing on
21 September 24, 2004, for inmate Fred Baker, in which it was noted that
22 due to an apparent malfunction of the recording equipment, the
23 decision portion of the hearing could not be transcribed.


24 3. I am also familiar with the decision review process.

25 4. When as in Baker's case, a significant portion of my July
26 1, 1992 hearing was unable to be transcribed, a new hearing was not
27 required. In lieu of a rehearing, the Decision Review Unit recommended
28 that the hearing panel's decision and reasoning for the decision

1 be "taken entirely from the [BPT-1000(a)] decision worksheet." See
2 (Appendix B(2)).

3 5. On October 14, 1992, the Decision Review Committee adopted
4 the Decision Review Unit's recommendation in full (Appendix B(3)), and
5 shortly thereafter, David E. Brown (then, Chief Counsel) ordered the
6 recommendation to be adopted. Consequently, my two year denial was
7 upheld without any further proceedings. (Appendix B(4)).

8 I declare under penalty and perjury that the foregoing is true
9 and correct and that this declaration was executed on June
10 9, 2006, at Soledad, California.

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14 FREDDY FIKES
15 Declarant
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APPENDIX B (2)

BOARD OF PRISON TERMS

REVIEW OF PROPOSED DECISION

OF CALIFORNIA

☐ APPROVED

REFER TO DECISION REVIEW COMMITTEE



REFER TO RECONSIDERATION PANEL

INMATE Freddy Fikes

CDC NUMBER B 65105

TYPE OF HEARING Subsequent Parole Consideration Hearing

DATE OF HEARING 7/1/92

The Decision Review Unit (LMS) has completed a review of the above hearing and has identified the following issues which need further review.

The transcript of the hearing in this matter is incomplete. Apparently, the last portion of the hearing was not recorded, probably because of a problem with the tape recorder. Fortunately, the decision worksheet containing the decision and reasoning for the decision was retained. Therefore, DRU is recommending that the decision printed below, taken entirely from the decision worksheet (BPT 1000(a)) be adopted by the decision review committee.

RECOMMENDATION:

Do an Errata Sheet containing the following from the Life Prisoner Parole Consideration Worksheet:

DECISION

The panel reviewed all information received from the public and relied on the following circumstances in concluding that the prisoner is not suitable for parole and would pose an unreasonable risk of danger to society and a threat to public safety if released from prison:

1. The offense was carried out in a manner which exhibits a callous disregard for the life and/or suffering of another.
2. The offense was carried out in a dispassionate and/or calculated manner.
3. Multiple victims were attacked and injured in the same or separate incidents.
4. The victim was abused during the offense.
5. The kidnap and rape of the victim did not deter the prisoner from later committing another kidnap and physically harming another female victim.
6. The prisoner has prior criminality which includes an arrest for burglary and auto theft. The charges were dismissed.
7. The prisoner has programmed in a limited manner while incarcerated, failed to upgrade educationally and vocationally as previously recommended by the Board, and not participated to any extent in beneficial self-help and/or therapy programs.
8. The March 30, 1992, psychological report by Dr. Reed is unfavorable.

The panel makes the following findings:

1. The prisoner needs therapy in order to face, discuss, understand, and cope with stress in a non-destructive manner. Until progress is made, the prisoner continues to be unpredictable and a threat to others.
2. Therapy in a controlled setting is needed but motivation and amenability are questionable.
3. Nevertheless, the prisoner should be commended for excellent work reports and being disciplinary free since 1989.

The prisoner is denied parole for two years. The panel finds that it is not reasonable to expect that parole would be granted at a hearing during the following two years. The specific reasons for this finding are as follows:

1. The prisoner committed the offense in an especially heinous, atrocious and cruel manner. Specifically, he participated in the kidnap and rape of one female victim and one month later the forced oral copulation of another. As a result, a longer period of observation and/or evaluation is required before the Board should set a parole date.

1138

Page Two

Fikes, Freddy (B 65105)

2. A recent psychological report dated March 30, 1992, authored by Dr. Reed indicates a need for a longer period of observation and evaluation or treatment.
3. The prisoner has not completed necessary programming which is essential to his adjustment and he needs additional time to gain such programming.

The panel recommends that the prisoner:

1. Remain disciplinary free.
2. Upgrade vocationally and educationally.
3. Participate in self-help and therapy programming.

The panel requests that The Department of Corrections:

1. Transfer the prisoner to an appropriate facility for the purpose of Category "T" programming.
2. Enter the prisoner in a Category "T" program to explore:
 - a. His violence in the free community and evaluate his psycho-sexual problems,
 - b. The extent to which the prisoner has explored the commitment offense and come to terms with the underlying causes, and the need for further therapy programs while incarcerated.

and check the box on the title page of the transcript indicating that an errata sheet has been prepared.

DECISION REVIEW UNIT SIGNATURE

DATE

DAVID E. BROWN CHIEF COUNSEL

9-25-92

REVIEWED BY LEGAL COUNSEL

LEGAL COUNSEL INITIALS

RESULT

☒ YES ☐ NO☒ CONCUR ☐ DISSENT

LEGAL COUNSEL COMMENTS:

I have reviewed the above-referenced file and

☒ concur☐ dissent with the Decision Review Unit.

COMMENTS:

Refer TO Decision Review Committee

CHIEF DEPUTY COMMISSIONER SIGNATURE

DATE

BPT 1138 (4/87)

STATE OF CALIFORNIA

BOARD OF PRISON TERMS

APPENDIX B (3)

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

DECISION REVIEW COMMITTEE REVIEW OF PROPOSED DECISION

INMATE Freddy Fikes

CDC Number B 65105

TYPE OF HEARING Subsequent Life Parole Consideration Hearing

DATE OF HEARING 7/1/92

CHOOSE ONE:

☐

Schedule new hearing

☐

Modify decision

MODIFICATION ORDERED:

A. Do the following:

Do an Errata Sheet containing the following from the Life Prisoner Parole Consideration Worksheet:

DECISION

The panel reviewed all information received from the public and relied on the following circumstances in concluding that the prisoner is not suitable for parole and would pose an unreasonable risk of danger to society and a threat to public safety if released from prison:

1. The offense was carried out in a manner which exhibits a callous disregard for the life and/or suffering of another.
2. The offense was carried out in a dispassionate and/or calculated manner.
3. Multiple victims were attacked and injured in the same or separate incidents.
4. The victim was abused during the offense.
5. The kidnap and rape of the victim did not deter the prisoner from later committing another kidnap and physically harming another female victim.
6. The prisoner has prior criminality which includes an arrest for burglary and auto theft. The charges were dismissed.
7. The prisoner has programmed in a limited manner while incarcerated, failed to upgrade educationally and vocationally as previously recommended by the Board, and not participated to any extent in beneficial self-help and/or therapy programs.
8. The March 30, 1992, psychological report by Dr. Reed is unfavorable.

The panel makes the following findings:

1. The prisoner needs therapy in order to face, discuss, understand, and cope with stress in a non-destructive manner. Until progress is made, the prisoner continues to be unpredictable and a threat to others.
2. Therapy in a controlled setting is needed but motivation and amenability are questionable.
3. Nevertheless, the prisoner should be commended for excellent work reports and being disciplinary free since 1989.

The prisoner is denied parole for two years. The panel finds that it is not reasonable to expect that parole would be granted at a hearing during the following two years. The specific reasons for this finding are as follows:

1. The prisoner committed the offense in an especially heinous, atrocious and cruel manner. Specifically, he participated in the kidnap and rape of one female victim and one month later the forced oral copulation of another. As a result, a longer period of observation and/or evaluation is required before the Board should set a parole date.
2. A recent psychological report dated March 30, 1992, authored by Dr. Reed indicates a need for a longer period of observation and evaluation or treatment.
3. The prisoner has not completed necessary programming which is essential to his adjustment and he needs additional time to gain such programming.

1138

Page Two

Fikes, Freddy (B 65105)

The panel recommends that the prisoner:

1. Remain disciplinary free.
2. Upgrade vocationally and educationally.
3. Participate in self-help and therapy programming.

The panel requests that The Department of Corrections:

1. Transfer the prisoner to an appropriate facility for the purpose of Category "T" programming.
2. Enter the prisoner in a Category "T" program to explore:
 - a. His violence in the free community and evaluate his psycho-sexual problems;
 - b. The extent to which the prisoner has explored the commitment offense and come to terms with the underlying causes, and the need for further therapy programs while incarcerated.

and check the box on the title page of the transcript indicating that an errata sheet has been prepared.

OR

B. Take the following action: (please specify) _____

SUPPORTIVE REASONING FOR DECISION:

This follows the intent of the hearing panel.

COMMISSIONER SIGNATURE

DATE

☒ CONCUR

☐ DISSENT

COMMISSIONER/D.C. SIGNATURE

DATE

☒ CONCUR

☐ DISSENT

COMMISSIONER/D.C. SIGNATURE

DATE

☒ CONCUR

☐ DISSENT

I dissent from the majority for the following reasons:

SIGNATURE

DATE

APPENDIX B (4)

Board of Prison Terms
Errata Sheet
10/19/92

Prisoner: Freddy Fikes, B-65105

Type of Hearing: 10th Subsequent Parole Consideration

Date of Hearing: July 1, 1992

Place of Hearing: California State Prison, Corcoran

Hearing Panel: Ron Koenig and Joseph Aceto, Commissioners
Cheryl Pliler, Deputy Commissioner

Decision Review Committee Panel Ordering Correction:
Maureen O'Connell, James Nielsen, and Manuel Guaderrama

Correction Ordered:

[The transcript of the hearing in this matter is incomplete. Apparently, the last portion of the hearing was not recorded, probably because of a problem with the tape recorder. Fortunately, the decision worksheet containing the decision and reasoning for the decision was retained.]

DECISION

The panel reviewed all information received from the public and relied on the following circumstances in concluding that the prisoner is not suitable for parole and would pose an unreasonable risk of danger to society and a threat to public safety if released from prison:

1. The offense was carried out in a manner which exhibits a callous disregard for the life and/or suffering of another.
2. The offense was carried out in a dispassionate and/or calculated manner.
3. Multiple victims were attacked and injured in the same or separate incidents.
4. The victim was abused during the offense.
5. The kidnap and rape of the victim did not deter the prisoner from

ERRATA SHEET

Fikes B-65105: 7/1/92

Page Two

later committing another kidnap and physically harming another female victim.

6. The prisoner has prior criminality which includes an arrest for burglary and auto theft. The charges were dismissed.

7. The prisoner has programmed in a limited manner while incarcerated, failed to upgrade educationally and vocationally as previously recommended by the Board, and has not participated to any extent in beneficial self-help and/or therapy programs.

8. The March 30, 1992 psychological report by Dr. Reed is unfavorable.

The panel makes the following findings:

1. The prisoner needs therapy in order to face, discuss, understand, and cope with stress in a non-destructive manner. Until progress is made, the prisoner continues to be unpredictable and a threat to others.

2. Therapy in a controlled setting is needed, but motivation and amenability are questionable.

3. Nevertheless, the prisoner should be commended for excellent work reports and being disciplinary free since 1989.

The prisoner is denied parole for two years. The panel finds that it is not reasonable to expect that parole would be granted at a hearing during the following two years. The specific reasons for this finding are as follows:

1. The prisoner committed the offense in an especially heinous, atrocious and cruel manner. Specifically, he participated in the kidnap and rape of one female victim and, one month later, the forced oral copulation of another. As a result, a longer period of observation and/or evaluation is required before the Board should set a parole date.

2. A recent psychological report dated March 30, 1992, authored by Dr. Reed, indicates a need for a longer period of observation and evaluation or treatment.

3. The prisoner has not completed necessary programming which is

ERRATA SHEET

Fikes B-65105: 7/1/92

Page Three

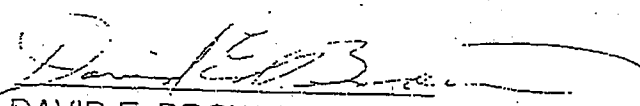
essential to his adjustment and he needs additional time to gain such programming.

The panel recommends that the prisoner:

1. Remain disciplinary free.
2. Upgrade vocationally and educationally.
3. Participate in self-help and therapy programming.

The panel requests that the Department of Corrections:

1. Transfer the prisoner to an appropriate facility for the purpose of Category "T" programming.
2. Enter the prisoner in a Category "T" program to explore:
 - a. His violence in the free community and evaluate his psycho-sexual problems, and
 - b. The extent to which the prisoner has explored the commitment offense and come to terms with the underlying causes, and the need for further therapy programs while incarcerated.

Signed: 

DAVID E. BROWN

Chief Counsel

PROOF OF SERVICE BY MAIL

I, the undersigned, do hereby declare:

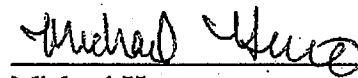
That I am a citizen of the United States, I am a resident of the County of Monterey, California. I am over the age of eighteen (18) years; and not a party to the cause set forth in the attached motion. My business address is:

Law Office of Michael Herro
134 Central Ave.
Salinas, Ca. 93901

On July 10, 2006, I served the attached "AMENDED/SUPPLEMENTAL PETITION" by mail, through the United States Postal Service, delivery to,

1. The Office of the Attorney General-Correctional Law Divison
Attn: Deputy Attorney General Denise Yates
455 Golden Gate Ave., Suite 11000
San Francisco, Ca. 94102-7004

I declare the above to be true and correct, under penalty of perjury, dated July 10, 2006 in Salinas, California.


Michael Herro

FILED

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

NOV 29 2006

LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
[Signature] DEPUTY

In re)	Case No.: HC 4990	K. Hanson
)		
Fred L. Baker (C-22918))	ORDER	
)		
On Habeas Corpus.)		

Petitioner brought the instant petition for writ of habeas corpus in which he averred that the Board of Prison Terms violated his constitutional right to due process by rescinding its September 24, 2004 parole suitability finding. As explained in the original Order to Show Cause issued by this Court, the sole reason for the Board's rescission was that a portion of the parole suitability hearing was not transcribed. Only a partial transcript could be obtained either because the tape recorder malfunctioned or because the Board only provided one of two hearing tapes for transcription. Petitioner has been incarcerated since November 6, 1980 following his conviction of kidnap for robbery with use of a firearm (Pen. Code secs. 209, 12022.5). He has served twelve years beyond his minimum eligible parole date of July 31, 1994.

The Court issued an Order to Show Cause, directing Respondent to establish why any rescheduled hearing should not be before the same Board members with instructions to issue a Decision recommending parole, and to address the apparent inequity created by Respondent's interpretation of the law. Respondent defended the Board's actions as proper, and declined to address the relevant equities of the matter. Petitioner then filed his Traverse/Response, a motion to amend the Traverse/Response, and a Request for Judicial Notice. Respondent filed an opposition and objection, and Petitioner filed a subsequent response. The Court granted Petitioner's request for judicial notice of blank BPT Forms 1000(a)-(b) [parole consideration

worksheets utilized by the Board in considering an inmate's suitability for parole] and BPT Form 1138 [Review of Proposed Decision]. As to the latter documents, the Court took judicial notice of the Board's official act in utilizing Form 1138 in its determination of Declarant's parole suitability, but not the veracity of the facts alleged therein. The Court did not consider Petitioner's jurisdictional claims (Pen. Code sec. 3041(b); 15 CCR secs. 2041, 2042, 2451). *Board of Prison Terms v. Superior Court* (2005) 130 Cal.App.4th 1212, 1238-39.

Upon review and consideration of the pleadings, the Court determined that the habeas petition contained pleading defects which required correction in order to ensure that Petitioner was afforded a full and fair hearing and a determination of the issues presented. The Court gave notice of the defects and granted Petitioner leave to amend or supplement the petition. Specifically, Petitioner was invited to (1) address whether the Board lost jurisdiction to preside over the December 2004 parole suitability re-hearing; (2) attach the September 2004 recommendation granting parole; (3) attach the forms and documents generated and utilized by the Board in connection with the September 2004 hearing; and (4) provide a further Declaration from inmate Fikes concerning the Board's actions in relying on hearing documents to produce a hearing transcript in lieu of conducting a *de novo* hearing.

The Court has read and considered Petitioner's amended/supplemental petition and attachments. It appears that Petitioner has alleged sufficient facts and circumstances therein to state a *prima facie* case for relief. *People v. Duvall* (1995) 9 Cal.4th 464. Accordingly, Respondent is Ordered to Show Cause why Petitioner should not be afforded the relief sought in his amended/supplemental petition. Respondent is further Ordered to ascertain from case records staff which forms it made available to the commissioners for use at Petitioner's September 2004 parole suitability hearing,¹ and to provide the Court with accurate copies of

¹ By correspondence dated June 28, 2006, Respondent advised counsel for Petitioner that "case records staff simply makes [BPT 1000(a) and (b)] forms available to the commissioners for use at the hearing, if necessary." Respondent further claimed that Petitioner's production request was "ambiguous" as to the "forms and documents

1 such forms and documents. The Court notes that in the "Parole Consideration Proposed
2 Decision (BPT sec. 2041)" worksheet completed by the September 2004 BPT panel, Petitioner
3 was specifically advised: "If the proposed decision . . . granting parole is disapproved, you will
4 receive a copy of the proposed decision and the reasons for disapproval." Apparently, the copy
5 for the proposed decision and stated reasons of the grounds for disapproval are not in
6 Petitioner's central file. Respondent is requested to provide the Court with a copy of the
7 proposed decision and stated reasons for the disapproval of the September 2004 suitability
8 finding.

9 Respondent shall show cause by Return filed in this Court within thirty (30) days after
10 the date of filing this Order. Petitioner may file his Traverse within thirty (30) days after
11 service and filing of the Return. Upon receipt of the Return and Traverse, the Court shall
12 determine whether to address the matter on the pleadings or set an evidentiary hearing.

13 IT IS SO ORDERED.

14 Dated: **NOV 20 2006**

MARLA O. ANDERSON

Hon. Marla O. Anderson
Judge of the Superior Court

25 generated and utilized by the Board in connection with Petitioner's hearing." It is disingenuous to suggest that the
Board is unable to identify which of its own documents it generates and utilizes in the performance of its duties in
conducting parole suitability hearings.

CERTIFICATE OF MAILING

C.C.P. SEC. 1013a

I do hereby certify that I am not a party to the within stated cause and that on

NOV 20 2006

I deposited true and correct copies of the following document:

ORDER in sealed envelopes with postage thereon fully prepaid, in the mail at Salinas, California, directed to each of the following named persons at their respective addresses as hereinafter set forth:

Michael Herro
Law Office of Michael Herro
134 Central Avenue
Salinas, CA 93901

Office of the Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102
Attn: Correctional Law Section

Pam Ham, DDA
240 Church St., Rm. 101
Salinas, CA 93901

Via interoffice mail

NOV 20 2006

Dated: _____

LISA M. GALDOS,
Clerk of the Court

By: 

Deputy

K. Hanson

Exhibit Q.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY
SALINAS DIVISION

In re

FRED L. BAKER,

Petitioner,

On Habeas Corpus.

No. HC 4990

[PROPOSED] ORDER

Dept:

Judge:

The Honorable Marla O.
Anderson

The court considered respondent's request for an extension of time to file a supplemental return, and good cause appearing,

IT IS HEREBY ORDERED that respondent's request for an extension of time to file a supplemental return is **GRANTED**; respondent shall file a supplemental return by **January 8, 2007**. If petitioner wishes to file a traverse, he shall file his traverse within thirty days after service and filing of the return.

Dated: _____

Hon. Marla O. Anderson
Judge of the Superior Court

1 BILL LOCKYER
Attorney General of the State of California
2 MARY JO GRAVES
Chief Assistant Attorney General
3 JULIE L. GARLAND
Senior Assistant Attorney General
4 ANYA M. BINSACCA
Supervising Deputy Attorney General
5 DENISE A. YATES, State Bar No. 191073
Deputy Attorney General
6 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
7 Telephone: (415) 703-5531
Fax: (415) 703-5843
8 Attorneys for Respondent Ben Curry, Acting Warden
at the Correctional Training Facility
9 SF2005200086

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF MONTEREY

12 SALINAS DIVISION

13
14 In re

15 FRED L. BAKER,

16 Petitioner,

17 On Habeas Corpus.

No. HC 4990

RESPONDENT'S REQUEST FOR
AN EXTENSION OF TIME TO FILE
A SUPPLEMENTAL RETURN;
COUNSEL'S SUPPORTING
DECLARATION

18
19 Judge: The Honorable Marla O.
Anderson

20 REQUEST

21 Respondent Ben Curry, Acting Warden at the Correctional Training Facility, requests that
22 the court, for the reasons set forth in the attached declaration of counsel, grant an extension of
23 time to, and including, **January 8, 2007**, to file a supplemental return.

24 DECLARATION

25 I, DENISE A. YATES, declare as follows:

26 1. I am an attorney admitted to practice before the courts of the State of California
27 and before this Court. I am employed by the California Attorney General's Office as a Deputy
28 Attorney General in the Correctional Writs and Appeals Section, and I am assigned to represent

1 respondent in this case.


2 2. Pursuant to the court's November 20, 2006 order to show cause, respondent's
3 supplemental return is due December 20, 2006. I need additional time to file a supplemental
4 response in this case because although I have prepared the supplemental return, I have been
5 unable to secure a declarant for the supporting declaration. Because I am uncertain when I will
6 be able to secure a declarant during this holiday season, I respectfully request additional time
7 until January 8, 2007, file a supplemental return.

8 3. This request for an extension of time is not made for any purpose of harassment,
9 undue delay, or for any improper reason. Without this requested extension of time, I would not
10 be able to properly and thoroughly address the court's concerns.

11 4. On December 20, 2006, I left a message for Baker's counsel, Michael Herro, that I
12 would be requesting this extension of time. Petitioner Baker is serving a life sentence with the
13 possibility of parole and should not be prejudiced by this request, especially since I am informed
14 that he waived his parole consideration hearing yesterday.

15 5. Respondent has not previously requested an extension of time to file a
16 supplemental return in response to the court's November 20, 2006 order to show cause.

17 I declare under penalty of perjury that the foregoing is true and correct and that this
18 declaration was executed on December 20, 2006, at San Francisco, California.

19
20 
21 DENISE A. YATES
22 Deputy Attorney General
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: In re FRED L. BAKER

No.: HC04990

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On December 20, 2006, I served the attached

**RESPONDENT'S REQUEST FOR AN EXTENSION OF TIME TO FILE A
SUPPLEMENTAL RETURN; COUNSEL SUPPORTING DECLARATION**

[PROPOSED] ORDER

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Michael Herro
Attorney at Law
Herro Law Offices
134 Central Avenue
Salinas, CA 93901
Attorney for Fred L. Baker C-22918

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **December 20, 2006**, at San Francisco, California.

J. Tucay
Declarant

J. Tucay
Signature

Exhibit R.

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF MONTEREY**

Date: 12-29-2006

Hon. Judge Marla Anderson Habeas Judge

Kristie Hanson Deputy Clerk

People of the State of California, vs. Fred L. Baker (C-22818)	Case No. HC4990 Minute Order: Order to Extend Time To File Supplemental Return
--	--

It has come to the attention of the Court that due to clerical error, the file was misplaced until 12-29-2006.

Therefore, good cause showing, the respondent shall have an additional 30 days from the date of service of this order to show cause by Supplemental Return filed in this court, thereafter, Petitioner may file his Traverse within 30 days from the service and filing of the return.

MARLA ANDERSON

Judge of the Superior Court

CERTIFICATE OF MAILING

C.C.P. SEC. 1013a

I do hereby certify that I am not a party to the within stated cause and that on

1/5/07

I deposited true and correct copies of the following document:

ORDER in sealed envelopes with postage thereon fully prepaid, in the mail at Salinas,
California, directed to each of the following named persons at their respective addresses as
hereinafter set forth:

Michael Herro
Law Office of Michael Herro
134 Central Avenue
Salinas, CA 93901

Dated: 1/5/07

LISA M. GALDOS,
Clerk of the Court

By: 

Deputy

K. Hanson

Petitioner's COPY

Fred L. Baker
Correctional Training Facility
Central-Facility
C-22918, B-321L
P.O. Box 689
Soledad, CA 93960-0689

FILED

JAN 08 2007

LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
~~S. GARCIA~~ DEPUTY

Petitioner in Pro Per

SUPERIOR COURT OF MONTEREY COUNTY

IN AND FOR THE STATE OF CALIFORNIA

In re

FRED L. BAKER,

On Habeas Corpus.

HC 04990

MOTION TO GRANT RELIEF
REQUESTED IN PETITION
OF WRIT OF HABEAS CORPUS

TO THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF
MONTEREY, HONORABLE MARLA O. ANDERSON:

Petitioner, Fred Lee Baker, in Pro Per hereby respectfully request that this Court grant the relief requested in the above entitled matter. This matter was originally filed on January 27, 2005. Respondents submitted their Return on November 23, 2005 and Petitioner submitted an Amended Traverse/Response on January 6, 2006. On or about June 6, 2006, the Court issued an Order, inviting Petitioner leave to file a supplemental pleading to his original petition to address some very specific issues which in the Court's view were not expressly or implicitly raised in the original petition and pleadings filed in this matter. Specifically, Petitioner was invited to address

1 whether the Board lost jurisdiction to preside over the December
2 2004 parole suitability hearing.

3 On July 10, 2006 Petitioner filed his amended/supplemental
4 petition and attachments pursuant to the above Order. Upon
5 review and consideration of the pleadings in a subsequent Order
6 dated November 20, 2006, the Court issued findings that
7 Petitioner had "alleged sufficient facts and circumstances
8 therein to state a prima facie case for relief. Accordingly,
9 the Court ordered Respondent to Show Cause why Petitioner should
10 not be afforded the relief sought in his amended/supplemental
11 petition. In doing so, the Court stated that Respondent shall
12 show cause by Return filed in this Court within (30) days after
13 the date of the Order. Petitioner was invited to file a traverse
14 within (30) days thereafter.

15 On December 22, 2006 Petitioner received a letter from
16 Court appointed counsel Michael Herro, dated December 20, 2006
17 informing him that Mr. Herro would no longer be able to represent
18 Petitioner. Mr. Herro further noted "[a]s of today's date I
19 do not believe the AG has filed their Return, which by the terms
20 of the order would be due on Dec. 20, 2006." (A copy of the
21 December 2006 letter is attached hereto as Appendix 1.)

22 This Court has the authority to grant the relief requested
23 pursuant to Penal Code §§ 1474, 1480, Cal. Rules of Ct., §
24 4.551(d)-(f), and the memorandum of points and authorities
25 submitted herein.

26 I.

27 PETITIONER'S BURDEN PURSUANT TO PENAL CODE § 1474

28 To satisfy the initial burden of pleading adequate grounds

1 for relief, an application for habeas corpus must be made by
 2 petition, and "[i]f the imprisonment is alleged to be illegal,
 3 the petition must also state in what the alleged illegality
 4 consists." (id., § 1474, subd. (2).)

5 In summarizing the rules governing habeas corpus relief,
 6 the California Supreme Court ruled in In re Duvall, (1995) 9
 7 Cal.4th 464, 474, that "[t]he petition should both (i) state
 8 with particularity the facts on which relief is sought
 9 [citations], [and] (ii) include copies of reasonably available
 10 documentary evidence supporting the claim, including pertinent
 11 portions of trial transcripts and affidavits or declarations.
 12 [Citations]."

13 Moreover, when a reviewing court has determined that the
 14 petition states a prima facie case on a claim that is not
 15 procedurally barred, and issues an order to show cause directing
 16 the respondent to serve and file a written return, the
 17 "petitioner may either file a traverse or the parties may
 18 stipulate that the original habeas corpus petition be treated
 19 as a traverse. [Citations]." (Duvall, supra, 9 Cal.4th at
 20 p. 477; Cal. Rules of Ct., Rule 4.551(e).)

21 II

22 RESPONDENT'S RESPONSIBILITY PURSUANT TO PENAL CODE § 1480

23 To fulfill the duty conferred upon Respondent by statute, case
 24 law provides "the custodian of the confined person shall
 25 file responsive pleading, called a return, justifying the
 26 confinement. [Citation]." (Duvall, supra, 9 Cal.4th at pp.
 27 476-477; Board of Prison Terms v. Superior Court, (2005) 130
 28 Cal.App.4th 1212, 1237.)

1 The principle reiterated in this Court's precedent -- that
 2 where a return containing only general denials is deficient --
 3 is also firmly embedded in California law: "we have required
 4 the return to 'allege facts tending to establish the legality
 5 of petitioner's detention.'" (In re Sixto, (1989) 48 Cal.3d 1247,
 6 1252; see also In re Romero, (1994) 8 Cal.4th 728, 738 [indicat-
 7 ing "[t]he return ... must allege facts establishing the legality
 8 of petitioner's detention."]; In re Lawler, (1979) 23 Cal.3d
 9 190, 194 [return must allege facts]; In re Saunders, (1970)
 10 2 Cal.3d 1033, 1047 (same).)

11 In addition to the California Supreme Court's finding that
 12 Respondent's return "must either admit the factual allegations
 13 set forth in the habeas corpus petition, or allege additional
 14 facts that contradict those allegations" (Duvall, supra, 9 Cal.4th
 15 484), California law dictates that "[a]ny material allegation
 16 of the petition not controverted by the return is deemed admitted
 17 for the purpose of the proceeding." (Cal. Rules of Ct.,
 18 4.551(d).)

19 III

20 MEMORANDUM OF POINTS AND AUTHORITIES 21 IN SUPPORT OF RELIEF REQUESTED

22 A. Procedure Governing Habeas Corpus

23 In this State, "[t]he rules governing postconviction habeas
 24 corpus relief recognize the importance of the 'Great Writ,'
 25 an importance reflected in its constitutional status ... "
 26 (In re Clark, (1993) 5 Cal.4th 750, 763-764.) The "state
 27 constitution guarantees that a person improperly deprived of
 28

1 his or her liberty has the right to petition for a writ of
2 habeas corpus." (Duvall, supra, 9 Cal.4th at 474.) Thus, the
3 petition serves primarily to launch the judicial inquiry into
4 the legality of the restraints on the petitioner's personal
5 liberty.

6 In explaining the role of the court in habeas proceedings
7 the California Supreme Court noted:

8 "[w]hen presented with a petition for writ of
9 habeas corpus, a court must first determine
10 whether the petition states a prima facie
11 case for relief - that is, whether it states
12 facts that, if true, entitle the petitioner
13 to relief - and also whether the stated
14 claims are for any reason procedurally barred.
15 [Citation]."

16 (Romero, supra, 8 Cal.4th at 737.) If the court's preliminary
17 assessment indicates that the "petition is sufficient on its
18 face ..., the court is obligated to issue a writ of habeas
19 corpus." (Ibid.; Penal Code § 1476.) Moreover, California Court's
20 have developed the practice of using the order to show cause
21 as a substitute for the writ of habeas corpus requiring the
22 "respondent custodian to serve and file a written return."
23 (Romero, supra, 8 Cal.4th at 738, quoting In re Hochberg, (1970)
24 2 Cal.3d 870, 874.).

25 Because the return "is an essential part of the scheme" by which relief
26 is granted in a habeas corpus proceeding, "the respondent must
27 respond to the order to show cause by filing a return that
28 addresses the prima facie claims, to which the petitioner may
reply in a traverse." (Romero, supra, 8 Cal.4th 739; Board
of Prison Terms v. Superior Court, supra, 130 Cal.App.4th at
1240.) "When [Respondent's] return fails to dispute the

1 factual allegations contained in the petition and traverse, it
2 essentially admits those allegations." (Bland v. California
3 Dept. of Corrections, 20 F.3d 1469, 1471 (9th Cir. 1994) (quoting
4 Sixto, supra, 48 Cal.3d at 1247).)

5 **B. Applicability to Petitioner's Case**

6 Here, as detailed in the original petition filed in propria
7 persona on January 27, 2005, Petitioner challenged the Board's
8 authority to rescind its September 24, 2004 finding of
9 suitability for parole based solely on the fact that the Board
10 lost the decision portion of the transcript from the hearing,
11 there was no evidence to support rescission, and that his
12 continued incarceration grossly exceeds the established
13 guidelines. (Pet. at pp. 3(a)-3(d).)

14 After determining that Petitioner made a prima facie case
15 for relief, this Court ordered Respondent to Show Cause why
16 Petitioner should not be granted the relief sought in his
17 petition.^{1/} (Order, August 23, 2005.) However, rather than
18 filing a return responsive to the petition, Respondent has
19 instead chosen to defy the Court's directive and cites to Penal
20 Code Sections 3041(b), 3041.1, and 3042(b)-(c) for the
21 proposition that the Board's actions were proper and legally
22 mandated. Respondent further complain that the Court improperly
23 directed respondent to justify holding a rehearing rather than
24 having the panel re-create its decision. (Resp. Return at pp. 6-8.)

25
26 1. On November 20, 2006, Respondent was directed to address the
27 additional claims raised in the amended/supplemental petition filed on July
28 10, 2006. To date, Petitioner has not been served a copy of Respondent's
Return.

1 In a subsequent Order this Court rejected Respondent's
2 contention, concluding that "[n]o mandate is set forth requiring
3 a rehearing where, as here, the recording equipment malfunctions
4 or staff simply neglects to produce all tapes for transcription,"
5 and further noting that a "court is not constrained in its
6 crafting of an appropriate remedy simply because an action has
7 been inartfully pled." (Order, June 5, 2005.)

8 In the instant case, Respondent was afforded an opportunity
9 to respond to the Order to Show Cause but has failed to do so,
10 thus, with respect to the granting of habeas corpus, the
11 California Supreme Court explained:

12
13 "we did not say that respondent must be given
14 an opportunity, before a court grants habeas
15 relief, to file some sort of opposition;
16 rather, we said the respondent must be given
17 an opportunity to file a return, which is a
18 document filed only after issuance of an order
19 to show cause or a writ of habeas corpus."

20 (Romero, supra, 8 Cal.4th at 744.) The Supreme Court then
21 reaffirmed its position in Adoption of Alexander S., (1988)
22 44 Cal.3d 857, stating that "a court may grant a habeas corpus
23 petitioner final release from custody or other affirmative
24 relief after issuance of an order to show cause or a writ of
25 habeas corpus." (8 Cal.4th at 744.)

26 Accordingly, because Respondent's return did not dispute
27 the material facts alleged in the petition following the
28 issuance of the Order to Show Cause, this Court must find that
Respondent is deemed to admitted the facts that form the basis
of Petitioner's claims, and grant the petition for writ of
habeas corpus. (Sixto, supra, 48 Cal.3d at 1252; In re

1 Rosenkrantz, (2002) 29 Cal.4th 616, 658; Cal. Rules of Ct.,
2 Rule 4.551(d).)

3 THEREFORE, the Petition for Writ of Habeas Corpus should
4 be granted, and the Respondents be ordered to release Petitioner
5 forthwith.

6
7 Dated: January 4, 2007.

Respectfully Submitted,

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10 Fred L. Baker
11 Petitioner in Pro Per
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SUPERIOR COURT OF MONTEREY COUNTY
IN AND FOR THE STATE OF CALIFORNIA

In re

FRED L. BAKER,

On Habeas Corpus.

HC 04990

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am a resident of the State of California, County of Monterey. I am over the age 18 years and a party to the within action. My business/residence address is P.O. Box 689, Soledad, California, 93960-0689.

On January 4, 200⁷, I caused to be served the attached

MOTION TO GRANT RELIEF REQUESTED IN
PETITION OF WRIT OF HABEAS CORPUS

DECLARATION OF FRED L. BAKER IN SUPPORT OF MOTION TO
GRANT RELIEF REQUESTED IN
PETITION OF WRIT OF HABEAS CORPUS

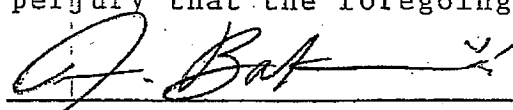
LETTER OF MICHAEL HERRO, DATED DECEMBER 20, 2006

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the internal mail collection system at the Correctional Training Facility at P.O. Box 689, Soledad, CA 93960-0689, addressed as follows:

Michael Herro
Law Office of Michael Herro
134 Central Avenue
Salinas, CA 93901

Office of the Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102
Attn: Correctional Law Section

I declare under penalty of perjury that the foregoing is true and correct.


Declarant

Mr. Frederick L. Baker
C-22918
Correctional Training Facility-Soledad
P.O. Box 689
Soledad, Ca. 93960

December 20, 2006

Mr. Baker-

I know it has been quite some time since we corresponded and I am truly sorry for not getting back to you sooner. I did talk to Ethel Martin not long ago and hope she got you the message from me. I will not attempt to provide an excuse as to how this matter has been handled either by myself or the court's, other than to tell you that I am sincerely sorry and that it was not my intention to prolong this matter, or let it "slip through the cracks". I am willing to do whatever is necessary (a declaration, etc.) should you seek remedy from a higher court.

I filed your request for ruling as requested, and then got a call from the research attorney explaining that an order had been issued, but that it was "lost" in the court building when it was shut down due to an industrial accident. I went repeatedly to the clerk's office over the next several weeks and asked if any order had been filed that they had a record of, but nothing ever showed up. On October 30, I moved from private practice into the Public Defender's Office, and Ms. Martin contacted me here at that office not long after. Following my conversation with her, I called the research attorney again, insisting that something be done on your case, as all of us involved with the courts and their administration had completely failed to properly handle your petition. She apologized profusely, told me that in fact they had just located the file and the "lost" order and that it would be sent out immediately. A short while after, I did receive the Order to Show Cause included with this letter. As of today's date I do not believe the AG has filed their Return, which by the terms of the order would be due on Dec. 20, 2006.

Due to my new position in the Public Defender's Office, I am no longer able to represent you in this matter. I have asked the Alternate Defender's Office, who originally assigned me your case to assign new counsel immediately to prepare the Traverse contemplated by the most recent order. If you feel that having a different attorney appointed will in any way not serve your best interest or prejudice your claim, I am willing to do whatever is necessary to continue representing you in this matter. Please write and let me know how you wish for me to proceed. Again, it is difficult to express how truly sorry I am about what has transpired in this matter, and hope that I can be of some service to you in the future.

Sincerely,


Michael Herro

Exhibit T.

ORIGINAL

1 BILL LOCKYER
Attorney General of the State of California
2 MARY JO GRAVES
Chief Assistant Attorney General
3 JULIE L. GARLAND
Senior Assistant Attorney General
4 ANYA M. BINSACCA
Supervising Deputy Attorney General
5 DENISE A. YATES, State Bar No. 191073
Deputy Attorney General
6 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
7 Telephone: (415) 703-5531
Fax: (415) 703-5843
8 Attorneys for Respondent Ben Curry, Acting Warden
at the Correctional Training Facility
9 SF2005200086

FEB 07 2007
FILED

FEB 07 2007

LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
[Signature] DEPUTY
S. GARSIDE

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

SALINAS DIVISION

In re

FRED L. BAKER,

Petitioner,

On Habeas Corpus.

No. HC 4990

**RESPONDENT'S RETURN TO
THE AMENDED/SUPPLEMENTAL
PETITION**

Judge: The Honorable Marla O.
Anderson

INTRODUCTION

20 A review of the protracted litigation in this case is warranted. Petitioner Baker, a prisoner
21 now proceeding with counsel in this habeas case, originally challenged the Board of Prison
22 Terms' (Board, now Board of Parole Hearings) decision that his September 24, 2004 parole
23 consideration hearing must be reheard because the entire hearing could not be transcribed. (Petn.
24 at pp. 3-3(a).) After the parties filed informal responses, the court ordered respondent to show
25 cause why a hearing should not be held by the same Board members, adopting the partial
26 transcript and recreating their decision recommending parole based on the transcript and their
27 independent recollection. (Order, filed August 23, 2005.)

28 Respondent informed the court that a rehearing was held, Baker declined to appear at the

1 hearing, and the Board denied Baker parole for one year. The court then questioned why a de
2 novo hearing was necessary to correct the Board's failure to properly record the 2004 hearing.
3 (Order, filed October 24, 2005.) In his return, respondent explained that because the transcript
4 did not contain the statements by the victim, the petitioner, or his attorney, as well as the Board's
5 decision, the hearing was not held in accordance with the law and must be redone. Further,
6 Baker's due process rights were not violated because the parole grant was a preliminary decision
7 subject to review by the Board and the Governor, and Baker did not have a due process liberty
8 interest in a preliminary decision. Moreover, it would be inappropriate to sanction something as
9 serious as paroling a life prisoner based on a decision the Board was forced to recreate from their
10 memory. Finally, respondent argued that the court could not grant any relief based on the Board
11 considering Baker's parole suitability de novo because Baker did not raise that issue in his
12 petition.

13 Baker filed at traverse, to which respondent objected. First, respondent objected to
14 Baker's request that the court take judicial notice of documents regarding another inmate's
15 hearing (inmate Freddy Fikes) where the decision was recreated based on the decision work sheet
16 that was fortuitously retained and reflected the Board's reasoning. Second, respondent objected
17 to Baker's newly-asserted claim that the Board had lost jurisdiction to preside over Baker's
18 "parole application" because Baker did not raise it in his petition.

19 The court took judicial notice of the BPT forms 1000(a) and 1000(b), and regarding the
20 decision worksheet used in inmate Fikes's hearing, the court took judicial notice of the Board's
21 official act in utilizing the form, but not the truth of the facts reflected on the form. Finally, the
22 court invited Baker to file an amended or supplemental petition to address facts and theories that
23 he did not raise in his original petition. The court invited Baker to attach to his amended or
24 supplemental petition: (1) the Board's written statement recommending that parole be granted;
25 (2) the forms and documents generated and used by the Board in connection with his hearing;
26 and (3) a declaration properly authenticating and identifying the documents inmate Fikes
27 references.

28 Baker filed an amended/supplemental petition in which he requested an additional ground

1 be added to his original petition. In his amended/supplemental petition, Baker summarily alleges
 2 that the Board's actions exceeded the time limits set forth in California Code of Regulations, title
 3 15, sections 2041, 2042, 2044, and 2451, and Penal Code section 3041(b). Baker then
 4 incorporates by reference section two in his traverse addressing this ground. Baker produced the
 5 documents he obtained from his central file, and the BPT 1000(b) form was not one of them.

6 The court has now ordered respondent to show cause why Baker should not be afforded
 7 the relief sought in his amended petition. Further, the court ordered respondent to ascertain from
 8 case records staff which forms it made available to the commissioners for use at Baker's 2004
 9 parole consideration hearing, and to provide the court with accurate copies of such forms and
 10 documents. In addition, the court requested respondent to provide a copy of the proposed
 11 decision and stated reasons for disapproval of Baker's 2004 hearing.

12 The amended/supplemental petition should be denied because it does not state a prima
 13 facie case for relief because the Board did not lose jurisdiction to rehear Baker's parole
 14 consideration hearing.

15 SUPPLEMENTAL RETURN

16 Respondent Ben Curry, Acting Warden at the Correctional Training Facility, for a
 17 supplemental return to the November 20, 2006 order to show cause, states:

18 1. Respondent denies that incorporating by reference an argument in his traverse
 19 meets Baker's burden of specifying the facts upon which relief is sought. (*In re Gallego* (1998)
 20 18 Cal.4th 825, 837-838, fn. 12 [finding that a habeas petitioner's incorporation by reference of
 21 allegations set forth in other parts of the petition and the facts set forth in the exhibits did not
 22 meet his burden of presenting specific allegations in support of his claim]); see also *People v.*
 23 *Duvall* (1995) 9 Cal.4th 464, 474 [noting that a habeas petitioner has the burden to specify the
 24 facts establishing grounds for his release]; *Board of Prison Terms v. Superior Court (Ngo)*
 25 (2005) 130 Cal.App.4th 1212, 1237 ["Only those claims raised in the original habeas petition or
 26 in a supplemental habeas petition may be considered by the court."]; cf. *In re Rosenkrantz* (2002)
 27 29 Cal.4th 616, 675 [noting that exhibits to habeas pleadings that are incorporated by reference
 28 are not evidence; but merely supplement the allegations, and are subject to admissibility at an

1 evidentiary hearing based on the rules of evidence]; but cf. *In re Gay* (1998) 19 Cal.4th 771, 781,
 2 fn. 7 [addressing the allegations in the petitioner's traverse that he had incorporated by reference
 3 from his petition and informal reply].) Alternatively, respondent denies that Baker states a prima
 4 facie case for relief in his amended/supplemental petition. (*People v. Duvall, supra*, 9 Cal.4th at
 5 p. 474.)

6 2. Respondent denies that the Board "lost jurisdiction" to preside over Baker's
 7 rehearing under the alleged time limits of sections 2041, 2042, 2044, and 2451 of title 15 of the
 8 California Code of Regulations, and Penal Code section 3041, subsection (b). The Board's
 9 September 24, 2004 decision did not become final for 120 days, namely, until January 22, 2005.
 10 (Cal. Code Regs., tit. 15, § 2041, subd. (h); Pen. Code, § 3041, subd. (b).) The sixty-day limit of
 11 section 2044 of the regulations does not apply to this case because a hearing panel member did
 12 not request that the en banc Board consider this case. (Cal. Code Regs., tit. 15, § 2044, subd.
 13 (a).) Rather, the decision to hold a rehearing was the result of the normal decision review
 14 process. (Return, Exs. 3-4.) Further, section 2042 of the regulations does not provide a time
 15 limit during which the Board must act. Section 2451 of the regulations also does not provide a
 16 time limit and is not relevant because it addresses rescission hearings, which Baker's was not.

17 3. Respondent denies that section 2041, subdivision (d) of the regulations applies to
 18 any issue raised in Baker's petition. Further, respondent denies that any regulatory language used
 19 by respondent in his return was not applicable at the time of Baker's hearing. (Cal. Code Regs.,
 20 tit. 15, §§ 2041-2042, History.) Moreover, respondent denies that the bases for disapproving a
 21 decision are limited to those delineated in section 2042 of the regulations.

22 4. Respondent denies that Baker requested any relief in his amended/supplemental
 23 petition. Alternatively, respondent denies that Baker is entitled to be released from prison. If the
 24 court decides to grant Baker habeas relief, the remedy is limited to a new parole consideration
 25 hearing before the Board that comports with due process. (See *In re Rosenkrantz, supra*, 29
 26 Cal.4th at p. 658 [noting that the proper remedy for a Board decision lacking some evidence is a
 27 new hearing comporting with due process]; *In re Carr* (1995) 38 Cal.App.4th 209, 218 [finding
 28 that the appropriate relief for a due process violation is to provide the process due].)

1 5... Respondent denies that Baker's due process rights were violated at his September
2 24, 2004 hearing. Respondent also denies that some evidence did not support the Board's
3 October 4, 2005 decision denying Baker parole.

4 6. Respondent denies that the court ordered respondent to show cause based on
5 Baker's claim of cruel and unusual punishment. Alternatively, respondent denies that Baker has
6 stated specific facts to meet his burden of stating a prima facie case for relief on this claim.
7 (*People v. Duvall, supra*, 9 Cal.4th at p. 474.) Finally, respondent denies that Baker has been
8 incarcerated in gross excess of the established guidelines for his offense and that his continued
9 incarceration constitutes excessive confinement in violation of the California Constitution. The
10 the sentencing matrix is not relevant, and the Board need not consider it, until the prisoner is
11 found suitable for parole. (*In re Dannenberg, supra*, 34 Cal.4th at p. 1098.)

12 7. Respondent denies that inmate Fikes's declaration properly authenticates the
13 documents attached to it as exhibits. Fikes's declaration merely identifies the documents, and
14 does not explain where the documents came from, that they are true and accurate copies, and how
15 he knows they are true and accurate copies. (See Evid. Code, § 1400.)

16 8. Respondent alleges that it would be impossible to recreate the September 24, 2004
17 Board decision granting parole based on existing documents. (See Levorse Decl; Maciel Decl.)

18 9. Baker was scheduled for a subsequent parole consideration hearing on December
19 19, 2006, but it was postponed at Baker's request because of his pending habeas petition.

20 10. Except as expressly admitted, respondent denies each and every allegation of the
21 amended/supplemental petition.

22 This supplemental return is based on the allegations and authorities above, respondent's
23 informal response, respondent's original return filed on November 28, 2005, respondent's
24 October 5, 2005 letter to the court, respondent's opposition to petitioner's request for judicial

25 ////

26 ////

27 ////

28 ////

1 notice, and respondent's objection to the traverse, all of which are incorporated by reference.

2 WHEREFORE, respondent respectfully requests that the petition for writ of habeas
3 corpus be denied and the orders to show cause be discharged.

4 Dated: January 31, 2007

Respectfully submitted,

5 BILL LOCKYER

6 Attorney General of the State of California

7 JAMES M. HUMES

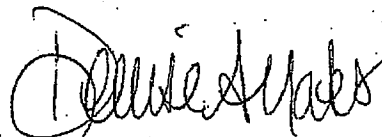
Chief Assistant Attorney General

8 FRANCES T. GRUNDER

Senior Assistant Attorney General

9 ANYA M. BINSACCA

Supervising Deputy Attorney General

10
11 

12 DENISE A. YATES

13 Deputy Attorney General

14 Attorneys for Respondent Ben Curry, Acting
15 Warden at the Correctional Training Facility

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: In re **FRED L. BAKER**

No.: **HC04990**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On February 1, 2007, I served the attached

RESPONDENT'S RETURN TO THE AMENDED/SUPPLEMENTAL PETITION

**DECLARATION OF SANDRA MACIEL IN SUPPORT OF
RESPONDENT'S SUPPLEMENTAL RETURN**

**DECLARATION OF DEBRA LEVORSE IN SUPPORT OF
RESPONDENT'S SUPPLEMENTAL RETURN**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Michael Herro
Attorney at Law
Herro Law Offices
134 Central Avenue
Salinas, CA 93901
attorney for Fred L. Baker
C-22918

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **February 1, 2007**, at San Francisco, California.

J. Tucay

Declarant

J. Tucay

Signature

ORIGINAL

FILED

FEB 07 2007

LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
S. Garside DEPUTY

S. GARSIDE

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 MARY JO GRAVES
Chief Assistant Attorney General
3 JULIE L. GARLAND
Senior Assistant Attorney General
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Fax: (415) 703-5843
8 Attorneys for Respondent Ben Curry, Acting Warden
at the Correctional Training Facility
9 SF2005200086

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF MONTEREY

12 SALINAS DIVISION

13
14 In re

15 **FRED L. BAKER,**

16 Petitioner,

17 **On Habeas Corpus.**

No. HC 4990

**DECLARATION OF SANDRA
MACIEL IN SUPPORT OF
RESPONDENT'S SUPPLEMENTAL
RETURN**

18 Judge: The Honorable Marla O.
19 Anderson

20 I, Sandra Maciel, declare:

21 1. I have been employed by the California Department of Corrections and
22 Rehabilitation as a Staff Services Manager I for the Board of Parole Hearings in the Decision
23 Processing and Scheduling Unit (DPU/SCH) since May 2001. In this capacity, I supervise staff
24 who perform various duties regarding the parole consideration hearing process, including
25 managing lifer packets that the records department of various prisons forwards to the Board after
26 a parole hearing. If sworn as a witness, I would be competent to testify to the facts contained
27 herein because they are within my personal knowledge.

28 2. After a parole consideration hearing, the DPU/SCH receives from the institution's

1 records department the lifer packet, the tape(s) of the hearing, and the forms filled out by the
 2 Board panel at the hearing. The DPU/SCH retains the lifer packet, the tape(s), and the completed
 3 forms for one year after the hearing was conducted. In the thirteenth month, the DPU/SCH
 4 purges the tapes and documents. That is, after an official transcript is prepared, the
 5 corresponding hearing tape(s) are destroyed. In addition, the documents in the lifer packet
 6 duplicative of those in the prisoner's central file are shredded, and some of the forms completed
 7 by the Board panel at the hearing, including the hearing transcript, are saved electronically.
 8 DPU/SCH staff are instructed to save the forms listed in exhibit one to this declaration if the
 9 DPU/SCH received them.

10 3. If a BPT 1000(b) Grant Worksheet was completed during a parole hearing, it is
 11 normally destroyed and thus, is not forwarded to the DPU/SCH. If a BPT 1000(b) Grant
 12 Worksheet was forwarded to the DPU/SCH, the DPU/SCH staff are instructed to electronically
 13 scan the form. A BPT 1000(b) Grant Worksheet for Baker's 2004 parole consideration hearing
 14 was not located and therefore, was presumably destroyed in the normal course of business or was
 15 never completed.

16 4. The Board does not prepare a separate decision suggested by the language at the
 17 bottom of the BPT 1005 form: "If the proposed decision denying or granting parole is
 18 disapproved, you will receive a copy of the proposed decision and the reasons for disapproval."
 19 Rather, at the hearing, the prisoner is informed of the reasons for the decision, which are then
 20 reflected in the decision portion of the hearing transcript, and he is provided a copy of the BPT
 21 1005 form. And after it is transcribed, a copy of the hearing transcript is forwarded to the
 22 prisoner.

23 I declare under penalty of perjury that the foregoing is true and correct and that this
 24 declaration was executed on January 31, 2007, at Sacramento, California.

25
 26 

27 Sandra Maciel
 28 Staff Services Manager I
 Decision Processing and Scheduling Unit

ORIGINAL

FILED

FEB 07 2007

LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
S. Garside DEPUTY
S. GARSIDE

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 MARY JO GRAVES
Chief Assistant Attorney General
3 JULIE L. GARLAND
Senior Assistant Attorney General
4 ANYA M. BINSACCA
Supervising Deputy Attorney General
5 DENISE A. YATES, State Bar No. 191073
Deputy Attorney General
6 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
7 Telephone: (415) 703-5531
Fax: (415) 703-5843
8 Attorneys for Respondent Ben Curry, Acting Warden
at the Correctional Training Facility
9 SF2005200086

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF MONTEREY

12 SALINAS DIVISION

13
14 In re

15 **FRED L. BAKER,**

16 Petitioner,

17 **On Habeas Corpus.**

No. HC 4990

**DECLARATION OF DEBRA
LEVORSE IN SUPPORT OF
RESPONDENT'S SUPPLEMENTAL
RETURN**

18 Judge: The Honorable Marla O.
19 Anderson

20 I, Debra Levorse, declare:

21 1. I have been employed by the California Department of Corrections and
22 Rehabilitation at the Correctional Training Facility (CTF) since approximately June 15, 1981. I
23 am a Correctional Counselor III and have been employed as the Classification and Parole
24 Representative in the records department at CTF since approximately July 2, 2001. In this
25 capacity, I supervise staff ("CTF staff") who perform various duties regarding the parole
26 consideration hearing process, including preparing certain documents that are presented to the
27 Board before parole consideration hearings. In addition, I am the liaison between the Board of
28 Parole Hearings and CTF. If sworn as a witness, I would be competent to testify to the facts

1 contained herein because they are within my personal knowledge.

2 2. I understand that the court has ordered case records staff to ascertain which forms
3 were made available to the Board commissioners for use at prisoner Fred Baker's (C-22918)
4 September 24, 2004 parole consideration hearing and to provide accurate copies of these forms
5 and documents.

6 3. Before a parole consideration hearing, CTF staff forwards certain blank Board
7 forms to the Board for use at the parole consideration hearing, as well as a packet of documents
8 (lifer packet), which is also sent to the prisoner's attorney and the district attorney before the
9 hearing. CTF staff forwards to the Board the following Board forms:

10 BPT 1000 Life Prisoner Parole Consideration Worksheet

11 BPT 1001 Life Prisoner Hearing Decision Face Sheet

12 BPT 1001A Life Prisoner Hearing - Extraordinary Action and Decision

13 BPT 1008 Life Prisoner Parole Consideration Hearing Checklist

14 The lifer packet consists of the documents in the prisoner's central file that correspond with the
15 documents listed in the BPT 1008 form.

16 4. I do not know if CTF staff forwarded every single document listed above to the
17 Board before Baker's 2004 parole consideration hearing, but CTF staff should have forwarded
18 them in the normal course of business. Included with this declaration as exhibits 1-4,
19 respectively, is a copy of the blank BPT forms listed above, namely, BPT 1000, BPT 1001, BPT
20 1000A, and BPT 1008.

21 5. In addition to the Board forms sent by CTF staff to the Board, miscellaneous
22 forms are available to the Board in the hearing room at CTF. Examples of the forms currently
23 available in the CTF hearing room are included in exhibit 5 to this declaration; these forms may
24 or may not apply to parole consideration hearings. I do not know what forms were available in

25 ///

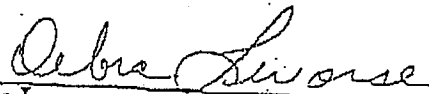
26 ///

27 ///

28 ///

1 the CTF hearing room at Baker's September 24, 2004 parole consideration hearing.

2 I declare under penalty of perjury that the foregoing is true and correct and that this
3 declaration was executed on January 10, 2007, at Soledad, California.
4

5
6 

7 Debra Levorse
8 Classification and Parole Representative
9 Records Department, Correctional Training Facility
10
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15
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17
18
19
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21
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23
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25
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27
28

Exhibit U.

MICHAEL A. HERRO, Attorney at Law (233749)
111 West Alisal Street
Salinas, California 93901
Telephone: (831) 755-5058

FILED

MAR 14 2007

LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
DEPUTY

SUPERIOR COURT OF MONTEREY COUNTY

S. GARSIDE

STATE OF CALIFORNIA

SALINAS DIVISION

IN RE

) CASE NO.: HC 4990

FRED L. BAKER

Petitioner

) (PROPOSED) ORDER

) GRANTING EXTENSION OF

) TIME

On Habeas Corpus

The Court, having considered Petitioner's request for an extension of time to file a Traverse in this matter, and good cause appearing,

IT IS HEREBY ORDERED that Petitioner's request for an extension of time to file a Traverse is **GRANTED**, and Petitioner shall have until March 30, 2007 to file the Traverse.

Dated: 3-14-07

JONATHAN R. PRICE

PROOF OF SERVICE

1 STATE OF CALIFORNIA)
2) §
3 COUNTY OF MONTEREY)

4 I, the undersigned, do hereby declare:

5 I am employed in the County of Monterey, California. I am over the age of eighteen
6 (18) years; a citizen of the United States; and not a party to the within action. My business
7 address is: 111 West Alisal Street, Salinas, CA 93901.

8 On this date, Wednesday, March 14, 2007, I served the attached **PETITIONER'S**
9 **REQUEST FOR EXTENSION OF TIME TO FILE** in case number **HC 4990**; in the
10 matter of **FRED BAKER** on the interested parties in said cause, as designated below:

11 _____ (By US. Postal Service) By placing on that date at my place of business, a
12 true copy thereof, enclosed in a sealed envelope with postage fully prepaid,
13 for collection and mailing with the United States Postal Service where it
14 would be deposited with the United States Postal Service that same day in
15 the ordinary course of business.

16 _____ (By personal service) I caused the document(s) to be personally delivered by
17 hand to the office(s) of the addressee(s).

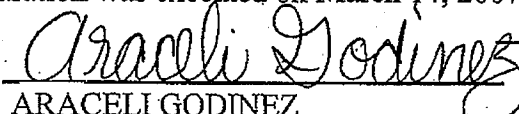
18 X (By U.S. Postal Express Mail) I caused a sealed envelope, with Express
19 Mail postage thereon fully prepaid, to be placed in the United States Mail
20 depository, at Salinas, California, for next day delivery.

21 _____ (By Fax Machine) I caused a true copy of the above referenced
22 document(s) to be transmitted by facsimile machine to the phone number
23 shown below each address, and caused a sealed envelope containing a true
24 copy of the same, with first class postage thereon fully prepaid, to be
25 deposited in the United States mail in Salinas, California.

26 Said document(s) is/are addressed as follows:

27 The Office of the Attorney General
28 Attention: Deputy Attorney Denise A. Yates
455 Golden Gate Ave. Suite 11000
San Francisco, CA 94102-7004

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 14, 2007, at Salinas, California.


ARACELI GODINEZ
SECRETARY ASSISTANT III

FILED

APR 24 2007

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

LISA M. GARDOS
CLERK OF THE SUPERIOR COURT
DEPUTY

OSCAR LUNA

In re

Fred L. Baker

On Habeas Corpus.

Case No.: HC 4990

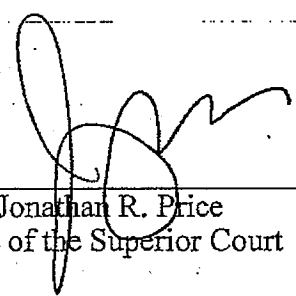
ORDER

Given the complexity of the issues raised and the need for a thorough examination of the file, the high number of habeas corpus petitions filed in the recent past, and staffing issues, the court requires additional time to review this matter before rendering a decision.

Good cause appearing, pursuant to California Rules of Court, Rule 4.551(h), the court, on its own motion, extends the time in which it is to issue an order to and including June 1, 2007.

IT IS SO ORDERED.

Dated: 4-24-07



Hon. Jonathan R. Price
Judge of the Superior Court

CERTIFICATE OF MAILING

C.C.P. SEC. 1013a

I do hereby certify that I am not a party to the within stated cause and that on April 24, 2007 I deposited true and correct copies of the following document: ORDER in sealed envelopes with postage thereon fully prepaid, in the mail at Salinas, California, directed to each of the following named persons at their respective addresses as hereinafter set forth:

Michael Herro, Attorney at Law
111 W Alisal St
Salinas, CA 93901

Denise A Yates, Deputy Attorney General
California Attorney General's Office
455 Golden Gate Ave, Ste 11000
San Francisco, CA 94102

Dated: _____

LISA M. GALDOS,
Clerk of the Court

By: _____
Deputy

FILED

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

JUN 01 2007

LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
DEPUTY

In re

Fred L. Baker

On Habeas Corpus.

) Case No.: HC 4990

S. GARSIDE

) ORDER

The background of the petition is as follows.

Petitioner is currently incarcerated at the Correctional Training Facility (CTF) in Soledad.

On September 24, 2004, the Board of Prison Terms (now Board of Parole Hearings) hearing panel found Petitioner suitable for parole.

On November 30, 2004, the Decision Review Unit recommended that the September 24, 2004 hearing be disapproved and that a rehearing be conducted on the next available calendar.

The then-chief counsel of the Board, Terry Farmer, endorsed the Decision Review Unit's recommendation. On December 14, 2004, the en banc Board voted to disapprove the proposed decision of September 24, 2004 to grant parole and to schedule a rehearing of the Petitioner's subsequent parole consideration hearing on the next available calendar.

On January 27, 2005, Petitioner filed a petition for writ of habeas corpus, claiming that the Board violated his due process rights when the Board ordered that his September 24, 2004 parole suitability hearing be reheard because the hearing could not be entirely transcribed.

On March 25, 2005, the court requested an informal response from the Attorney General's Office (Respondent). The court ordered that Petitioner may file a reply.

On July 28, 2005, Respondent filed an informal response.

On August 10, 2005, Petitioner filed a reply.

On August 23, 2005, the court issued an Order to Show Cause.

1 On October 4, 2005, a panel consisting of the same members who granted Petitioner
2 parole on September 24, 2004 conducted the rehearing. Petitioner waived his appearance at the
3 rehearing, but his counsel was present. Petitioner was denied parole for one year.

4 On October 7, 2005, Respondent filed a letter with the court, advising the court that
5 Petitioner's subsequent parole suitability hearing was held on October 4, 2005 and that the panel
6 denied Petitioner parole for one year.

7 On October 24, 2005, the court denied Respondent's request that the court modify its
8 Order to Show Cause. The court ordered Respondent to file a return on or before November 25,
9 2005. The court further ordered that Petitioner may file a denial on or before December 16,
10 2005.

11 On November 28, 2005, Respondent filed a return. On December 23, 2005, Petitioner
12 filed a denial.

13 Subsequently, Petitioner filed a motion to amend the denial and a request for judicial
14 notice and Respondent filed an opposition and objection.

15 On March 8, 2006, Petitioner filed a response to Respondent's opposition to request for
16 judicial notice and a response to Respondent's objection.

17 On June 5, 2006, the court found that the petition contained pleading defects which must
18 be corrected. The court granted Petitioner leave to amend or supplement his petition by
19 addressing facts and theories relevant to the Board's decision which were not expressly or
20 implicitly raised in the petition.

21 On July 10, 2006, Petitioner filed an amended/supplemental petition.

22 On August 5, 2006, Respondent filed a request for clarification and, if appropriate, the
23 issuance of an order to show cause.

24 On November 20, 2006, the court issued an order to show cause.
25

1 Petitioner's subsequent parole consideration hearing was scheduled for December 19,
2 2006, but it was postponed at Petitioner's request because of the instant petition.

3 Respondent was granted an extension of time to file a supplemental return by January 8,
4 2007. Subsequently, the court, on its own motion, granted Respondent an extension of time to
5 file a supplemental return within 30 days from January 5, 2007.

6 On February 1, 2007, the court denied Petitioner's "Motion to Grant Relief Requested in
7 Petition for Writ of Habeas Corpus."

8 On February 7, 2007, Respondent filed a return to the amended/supplemental petition.

9 Thereafter, Petitioner was granted an extension of time to file a supplemental denial on or
10 before March 30, 2007. On March 29, 2007, Petitioner filed a supplemental denial.

11 The court has reviewed all documents filed in this case.

12 The court finds that the Board did not lose jurisdiction to preside over Petitioner's
13 rehearing under the time limits of sections 2041, 2042, 2044 and 2451 of title 15 of the
14 California Code of Regulations and Penal Code section 3041(b). The Decision Review Unit
15 found that the September 24, 2004 hearing was not in accordance with the law because a
16 significant portion of the transcript was unable to be transcribed. In order to comply with the
17 law, the Decision Review Unit recommended that the September 24, 2004 decision be
18 disapproved and a rehearing be scheduled. (See Cal. Code Regs., tit. 15, §2042 [including that
19 *an error of law* is a basis for disapproving a decision].) On November 30, 2004, Daniel Moeller
20 signed the recommendation on behalf of the Decision Review Unit, and the then-chief counsel of
21 the Board, Terry Farmer, endorsed the Decision Review Unit's recommendation on the same
22 day. On December 14, 2004, the en banc Board considered the findings of the Decision Review
23 Unit and ordered that the panel decision be disapproved and a rehearing be scheduled. Thus, the
24 panel's September 24, 2004 decision did not become final on January 22, 2005. (Pen. Code,
25 §3041(b).) The sixty-day limit of section 2044 of the regulations does not apply to this case

1 because a hearing panel member did not request that the en banc Board consider this case. (Cal.
2 Code Regs., tit. 15, §2044(a).) The decision to hold a rehearing was the result of the normal
3 decision review process. (Return, Exhibits 3-4.) Section 2042 of the regulations does not
4 provide a time limit during which the Board must act. Section 2451 of the regulations also does
5 not provide a time limit and is not relevant because it addresses rescission hearings.

6 The court notes that Petitioner is not responsible for his September 24, 2004 parole
7 suitability hearing being transcribed in part only.

8 Nevertheless, the court finds that Petitioner's 2004 parole suitability hearing record is
9 insufficient. The hearing transcript is incomplete and *written documents* relating to the hearing
10 are insufficient. It would be inappropriate to order the panel to recreate their decision
11 recommending parole based on the incomplete transcript, insufficient written documents and
12 their independent recollection. The transcript of the 2004 hearing did not contain the statements
13 by the victim and the panel's findings and reasoning for granting Petitioner parole. In addition,
14 Petitioner and/or his attorney, as well as the deputy district attorney, likely gave a closing
15 statement that was not included in the transcript. The Board could not effectively fulfill the
16 statutory requirement that the hearing transcripts be made available to the public and be subject
17 to different levels of review with such an incomplete transcript. Aside from the incomplete
18 transcript, the only existing written documents relating to Petitioner's 2004 parole suitability
19 hearing are BPT1001 (Life Prisoner Hearing Decision Face Sheet), The Board's Miscellaneous
20 Decision dated December 20, 2004, BPT 1000 (Life Prisoner Consideration Worksheet) and
21 BPT1005 (Life Prisoner: Parole Consideration Proposed Decision). Respondent has shown that
22 it would be impossible to recreate the September 24, 2004 panel decision granting parole based
23 on the incomplete transcript and other *existing* documents (See Declarations of Debra Levorse
24 and Sandra Maciel). Regardless of whatever consultation the Board may have had with the
25 commissioners, having the panel members recreate the decision granting parole based on the

1 incomplete transcript, other existing documents and their independent recollection would not
2 cure the fact that the entire transcript was not recorded as required by law.

3 The court notes that in another inmate (Inmate Freddy Fikes)'s case the panel's decision
4 was recreated based on the decision work sheet that was fortuitously retained and reflected the
5 panel's reasoning. However, the instant case is distinguishable from Freddy Fikes' case. Fikes'
6 parole suitability hearing was held in 1992, the documents relating to Fikes' parole suitability
7 hearing do not reveal what part of Fikes' hearing was unable to be transcribed, and the errata
8 sheet was an available alternative because the *decision worksheet containing the decision and*
9 *reasoning for the decision was retained*. In Petitioner's case, his parole suitability hearing took
10 place in 2004, no decision worksheet containing the decision and reasoning for the decision was
11 retained, and the significant portion of the hearing was unable to be transcribed.

12 Petitioner's due process rights were not violated when the Board ordered that his parole
13 suitability hearing be reheard. The law requires that the entire hearing be recorded and
14 transcribed. The victim, the district attorney, and the defendant must have an opportunity to
15 voice their opinions. See Pen. Code, §§3043(b), 3042(a), 3041.5(a)(2). The transcript must be
16 available to the public (Pen. Code, §3042(b)), and it must include the findings and reasons
17 supporting the decision (Pen. Code, §3042(c)). The Board (Pen. Code, §3041(b)) and the
18 Governor (Pen. Code, 3041.1) must be able to competently review the panel's decision. The
19 hearing transcript omitted any further questions by the deputy district attorney, the panel, or
20 Petitioner's counsel. As also discussed above, the transcript did not contain the statements by
21 the victim and the panel's findings and reasoning for granting Petitioner parole. During its
22 mandatory review, Daniel Moeller of the Decision Review Unit recommended that because the
23 transcript was incomplete, the Board should disapprove the September 24, 2004 decision
24 granting parole and schedule a rehearing. Terry Farmer, the then-chief counsel of the Board,
25 endorsed the Decision Review Unit's recommendation. A new hearing is appropriate if there

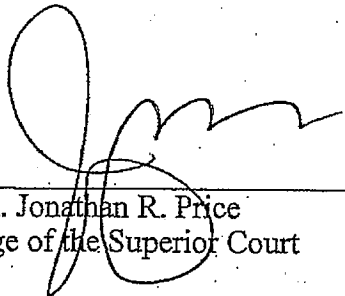
1 was an error of law or fact, or based on new information. Cal. Code Regs., tit. 15, §2042. If the
2 chief counsel recommends that a new hearing should be held, a new hearing will not be ordered
3 unless a majority of the Board sitting en banc votes to do so. Pen. Code, §3041(b). The Board
4 sitting en banc considered the *findings and recommendation* of the Decision Review Unit, and
5 voted to disapprove the September 24, 2004 proposed decision and schedule a rehearing.
6 Moreover, the panel's parole grant was a preliminary decision subject to review by the Board
7 and the Governor, and Petitioner did not have a due process liberty interest in a preliminary
8 decision. The panel notified Petitioner on multiple documents that its decision was a proposed
9 decision, it was not final, and it would be reviewed.

10 The tentative decision granting parole was reviewed and *a rehearing was held*. Upon
11 further review, the same panel concluded that public safety concerns required finding Petitioner
12 unsuitable for parole.

13 In light of the foregoing, the petition is denied.

14 IT IS SO ORDERED.

15 Dated: 6-1-07.

16
17 
18 _____
19 Hon. Jonathan R. Price
20 Judge of the Superior Court
21
22
23
24
25

CERTIFICATE OF MAILING

C.C.P. SEC. 1013a

I do hereby certify that I am not a party to the within stated cause and that on

JUN 01 2007 I deposited true and correct copies of the following document:

ORDER in sealed envelopes with postage thereon fully prepaid, in the mail at Salinas,
California, directed to each of the following named persons at their respective addresses
as hereinafter set forth:

Michael Herro, Attorney at Law
111 West Alisal St
Salinas, CA 93901

Denise A. Yates, DAG
Office of the Attorney General
455 Golden Gate Ave, Suite 11000
San Francisco, CA 94102-7004

Dated: JUN 01 2007

LISA M. GALDOS,
Clerk of the Court

By: 

Deputy

S. GARSIDE

Exhibit X.

SUBSEQUENT PAROLE CONSIDERATION HEARING
COURT-ORDERED REHEARING
STATE OF CALIFORNIA
BOARD OF PAROLE HEARINGS

In the matter of the Life)
Term Parole Consideration)
Hearing of:)

CDC Number C-22918

FRED BAKER)
_____)

COPY
INMATE

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

OCTOBER 4, 2005

PANEL PRESENT:

Ms. Susan Fisher, Presiding Commissioner
Mr. Rolando Mejia, Deputy Commissioner

OTHERS PRESENT:

Ms. Linda Dunn, Deputy District Attorney
Mr. Val Dixon, victim
Ms. (indiscernible) Dixon, victim family member
Ms. Sara (phonetic) Balli, victim support member
Ms. Marion Tardiff, attorney for Inmate

CORRECTIONS TO THE DECISION HAVE BEEN MADE

No See Review of Hearing
Yes Transcript Memorandum

Patricia Chapin, Peters Shorthand Reporting

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--oOo--

P R O C E E D I N G S

1
2 PRESIDING COMMISSIONER FISHER: This is a
3 court-ordered hearing for Fred Baker, CDC No. C-22918.
4 This is 10/04/05, and we're located at the
5 Correctional Training Facility at Soledad. The inmate
6 was received on 11/6/80 from Riverside County. The
7 life term began on 7/31/87, and the minimum eligible
8 parole date is 7/31/94. The controlling offense for
9 which the inmate has been committed is kidnap for
10 robbery, Case No. CR-17643, Count Six, and that's
11 Penal Code Section 209. There was an additional
12 finding in that count of the use of a firearm. That's
13 Penal Code Section 12022.5. Also there was Count One,
14 Penal Code Section 211 robbery. Also with the use of
15 a firearm. And Count Eight, that is Penal Code
16 Section 217 (indiscernible) with intent to commit
17 murder also with a finding of great bodily injury, and
18 that's Penal Code Section 12022.7. The inmate
19 received a term of seven years to life. Once again,
20 the minimum eligible parole date is 7/31/94. As I
21 stated earlier, this is a court-ordered hearing.

22 ATTORNEY TARDIFF: Rehearing.

23 PRESIDING COMMISSIONER FISHER: Rehearing.
24 Thank you. The court order is dated August 23, 2005,
25 signed by the Honorable Lila O. Anderson. I'm just
26 going to read the last paragraph because that's the
27 instruction to the panel. And it states, "Accordingly

1 respondent was ordered to show cause why petitioner
2 should not be" -- oh wait a minute. I'm sorry. I
3 have to start a little higher here. It's actually on
4 line two of the prior paragraph. "In the present
5 case, it would appear the most equitable solution
6 would be to reschedule the hearing before the same
7 group (indiscernible) with instructions to adopt the
8 existing transcript from the former hearing and
9 recreate their decision to recommend parole based on
10 that transcript and their independent recollection.
11 The court (indiscernible) was ordered to show cause
12 why petitioner should not be granted relief on his
13 petition. Specifically, the respondent is ordered to
14 show cause (indiscernible) the rescheduled hearing
15 should not be heard by the same board members with
16 instructions to issue a decision on it recommending
17 parole. The alternate public defender's office is
18 appointed to represent petitioner." All right. I'm
19 not going to go on with the rest of it. This is your
20 copy, Ms. Tardiff. All right. Now, regarding
21 Mr. Baker's appearance -- he's waiving his appearance
22 today; is that correct?

23 ATTORNEY TARDIFF: Yes, that is.

24 PRESIDING COMMISSIONER FISHER: Okay. And he
25 hasn't -- did he sign a waiver or did he just verbally

26 --

27 ATTORNEY TARDIFF: He verbally. I can get a

1 signed one later.

2 PRESIDING COMMISSIONER FISHER: All right. He
3 indicated to his attorney that he did not wish to
4 appear. I'm going to go ahead and have everyone state
5 their name for the record, starting with myself. I'm
6 going to go to the right. Susan Fisher, F-I-S-H-E-R,
7 Commissioner.

8 DEPUTY COMMISSIONER MEJIA: Rolando Mejia,
9 M-E-J-I-A, Deputy Commissioner.

10 DEPUTY DISTRICT ATTORNEY DUNN: Linda Dunn
11 (phonetic), Riverside County District Attorney's
12 Office.

13 MR. DIXON: Val Dixon (phonetic), victim.

14 DEPUTY COMMISSIONER MEJIA: Spell your last
15 name, please.

16 PRESIDING COMMISSIONER FISHER: Spell your last
17 name for us.

18 MR. DIXON: Oh, Dixon, D-I-X-O-N.

19 PRESIDING COMMISSIONER FISHER: Thank you. And
20 ladies, go ahead. You're on the tape. Spell your
21 last name, please.

22 INDISCERNIBLE ATTENDANT : D-I-X-O-N.

23 PRESIDING COMMISSIONER FISHER: Thank you.
24 It's for the transcriber. Go ahead.

25 MS. BALLI: Sara Balli (phonetic), B-A-L-L-I,
26 victim (indiscernible).

27 PRESIDING COMMISSIONER FISHER: Thank you.

1 ATTORNEY TARDIFF: Marion Tardiff, T-A-R-D-I-
2 double F, attorney for inmate Fred Baker, B-A-K-E-R,
3 CDC C Charlie 22918 who's waiving his appearance since
4 this is a rehearing.

5 PRESIDING COMMISSIONER FISHER: Okay. Now,
6 regarding the Americans With Disabilities Act. Are
7 you aware of any issues that we need to accommodate?

8 ATTORNEY TARDIFF: I am not.

9 PRESIDING COMMISSIONER FISHER: Okay. I do
10 want to note for the record that on 4/7/05, Mr. Baker
11 signed the BPT 1073 form and stated that he has no
12 disabilities. All right. Counselor, I think that
13 what I will do, if you have no objections, is to
14 incorporate by reference the summary of the crime from
15 the prior transcript.

16 ATTORNEY TARDIFF: But I have objections I want
17 to raise before we --

18 PRESIDING COMMISSIONER FISHER: Oh, I'm sorry.
19 And I neglected to ask for those. I'm leaping ahead
20 here. Go ahead. First of all, is there anything that
21 needs to be submitted?

22 ATTORNEY TARDIFF: No.

23 PRESIDING COMMISSIONER FISHER: All right. Go
24 ahead with your objections.

25 ATTORNEY TARDIFF: I'm objecting to this
26 hearing taking place since there is a current rated
27 process which basically alleges that the Board no

1 longer has jurisdiction over this matter to based on
2 3041(b) which states that, quote, "a decision of the
3 Parole Board finding an inmate suitable for parole
4 shall become final within 120 days of the date of the
5 hearing." And that would have been September 24, '04.
6 "During that period, the Board may review the panel's
7 decision. The panel's decision shall become final
8 unless the Board finds that the panel made an error of
9 law. When the panel's decision was based on an error
10 of fact or that new information should be presented to
11 the Board, any of which would correct or, considered
12 by the Board, has a substantial likelihood of
13 resulting in a substantially different decision upon a
14 rehearing. In making this decision, the Board shall
15 consult with the commissioners who conducted the
16 parole consideration hearing." Therefore since the
17 120 days has obviously gone -- since come and gone,
18 since it's over a year, the Board has lost
19 jurisdiction of this matter. Also I do not believe
20 that the Board consulted with the commissioners who
21 conducted this parole hearing on September 24, '04 as
22 according to this statute. Also, that this decision,
23 while it is a rehearing -- the Board is ordered to
24 find Mr. Baker suitable again. Mr. Baker again is
25 alleging that regardless of that, and he appreciates
26 that fact, the fact of the matter is the Board no
27 longer has even any power over the suitability of

1 unsuitability of Mr. Baker. And further, the order of
2 rehearing finding for the finding of suitability
3 simply is in Danenburg (phonetic), the court said that
4 that's a decision -- it states here, I'll read it for
5 you. "Respondents overturn and ordered rehearing the
6 granting panel's finding of suitability simply by
7 failing to record the decision portion of the hearing,
8 thus the high court rejected that." So basically this
9 hearing should not even take place. The only reason
10 it's taking place is the Board of Prison Terms stated
11 that they would not postpone it until the writ is gone
12 through the process and then finalized. But if the
13 rehearing, I suppose if I weren't even here, that my
14 client could potentially receive a 115, therefore
15 jeopardizing -- if in fact, he needs to have a
16 rehearing -- jeopardize his suitability. Simply the
17 Board has -- didn't do they're job in timely hearing
18 this matter, and he's not waiving his right to the --
19 right to prohibit the board for hearing this case, but
20 he's simply doing it because he's -- more or less it's
21 being forced upon him, therefore abolishing him of his
22 due process as well.

23 PRESIDING COMMISSIONER FISHER: Thank you. Is
24 that everything?

25 ATTORNEY TARDIFF: That's it.

26 PRESIDING COMMISSIONER FISHER: All right. I'm
27 going to overrule your objection, and we're going to

1 in compliance with the court order, go forward with
2 the hearing. Is there anything confidential to be
3 used today?

4 DEPUTY COMMISSIONER MEJIA: None will be used
5 today.

6 PRESIDING COMMISSIONER FISHER: All right.
7 Thank you. All right. Once again, I am specifically
8 incorporating the summary of the crime from the prior
9 transcript that starts on page 10, line 13. It goes
10 to page 15, line 5. It's my understanding that in
11 reading the court order, that we are to incorporate
12 essentially the entire transcript of the hearing that
13 we have available. So --

14 ATTORNEY TARDIFF: And so, are you going to be
15 incorporating the rest of the hearing as well?

16 PRESIDING COMMISSIONER FISHER: Let's -- I
17 believe that that's -- that's the verbiage used in the
18 court order, and so I'm -- my assumption is that we
19 will have -- we will do that. I'll let the lawyers
20 decide what part -- what they need to do when it comes
21 to that. We're going to go ahead and go forward. Is
22 there anything regarding the summary of events that
23 you need to comment upon, Counsel before we --

24 ATTORNEY TARDIFF: No, I believe it's in the
25 body of the existing transcript.

26 PRESIDING COMMISSIONER FISHER: All right. I'm
27 going to go on to Mr. Baker's history. I'm just going

1 to be the Board report dated September 2002 under pre-
2 conviction --

3 ATTORNEY TARDIFF: Okay. I need -- is there
4 any reason why you're not incorporating that as well?
5 It's to adopt the existing transcript from the former
6 hearing and recreate their decision. I think you're
7 just supposed to recreate your decision.

8 PRESIDING COMMISSIONER FISHER: I think that
9 that's true. I just think for the sake of -- I just
10 want to touch on some of these things as we go along
11 just for the sake of refreshing everyone's memory as
12 we move forward. His pre-conviction factors are: In
13 October 2002, in the Board report under juvenile
14 record, it says that he was arrested for burglary at
15 the age of 17 and sent to juvenile camp, and escaped
16 from camp and was committed to the Youth Authority.
17 Under adult convictions, it says he has no known prior
18 convictions as an adult. His personal history, social
19 history, is as follows: He -- it says here that he
20 was raised by his mother and his grandparents until he
21 was 15. At 15, he went to live with his father. At
22 the time of this report, which was in May of '03, he
23 had two brothers, both of whom he was still in
24 communication with. He has been -- it's my
25 understanding, let me look back up here just to
26 clarify -- he completed the 11th grade prior to his
27 incarceration, and quit school in the 10th grade. I'm

1 sorry, in the 12th grade. Good grief, I'm going
2 backwards instead of forwards. He quit school in the
3 12th grade. He's been married twice. First marriage,
4 he was -- was when he was 18. And the second marriage
5 was in 2002. At the time of this psych evaluation I'm
6 looking at, which was in '03 once again, he was still
7 married. (Indiscernible) is something that we do want
8 to take a look at again. It says -- in this
9 particular report, it says that he does not have a
10 significant substance abuse history; however, was
11 under the influence of marijuana and PCP at the time
12 of this commitment offense. He stated that he used
13 marijuana only two times in his life, the second being
14 just prior to the commitment offense, and denied using
15 any substances after being incarcerated. All right.
16 And I think that that, along with the prior
17 transcript, probably covers his social history. Is
18 there anything, Counsel, that I've left out, or that
19 you need to address regarding that?

20 ATTORNEY TARDIFF: No.

21 PRESIDING COMMISSIONER FISHER: All right.

22 I'll take a look at parole plans. Once again, I'm
23 looking at the most recent Board report. It's dated
24 5/25/04, and it says, under future plans, that they
25 remain the same as the prior report. It says that he
26 plans to parole to his wife, that's in Rancho
27 Cucamonga. It says that his wife will help him

1 financially. He has a second plan, which is for them
2 to reside in a piece of property owned by his aunt in
3 the Marino Valley, and a third plan, which is to --
4 for he and his wife to live with another aunt in
5 Fontana. He says his last residence he offered this
6 time, if necessary, is for him and his wife to reside
7 with his uncle in Rio Linda. Now, according to the
8 prior Board report --

9 ATTORNEY TARDIFF: Which prior report is that?

10 PRESIDING COMMISSIONER FISHER: October of
11 2002. It refers us back regarding employment. It
12 says he's received an employment offer from Mrs. Ethel
13 Martin (phonetic), who's an aunt, who's arranged
14 employment as a bookkeeper in the county for him.
15 Also he plans to upgrade his computer technology,
16 vocational skills by attending college in the evening
17 once funds are available. Is there anything related
18 to parole plans that have changed?

19 ATTORNEY TARDIFF: No.

20 PRESIDING COMMISSIONER FISHER: All right.

21 Then at this --

22 ATTORNEY TARDIFF: They're still valid.

23 PRESIDING COMMISSIONER FISHER: All right.

24 Then at this time, I'm going to turn the hearing over
25 to Commissioner Mejia to go through the
26 post-conviction factors.

27 DEPUTY COMMISSIONER MEJIA: (Indiscernible)

1 (indiscernible) His classification score is 19,
2 Medium-A (indiscernible) possible level. His academic
3 history as a GED in 1989, and (indiscernible) went to
4 college in 2004/2005. He has vocational information
5 technologies, and this is on his vocation course.
6 Self-help participation is up-to-date for AA
7 participation, June 30, 2005. And there's numerous
8 self-help groups such as Open to Violence Project,
9 Impact, Breaking Barriers (indiscernible), Lifers
10 (indiscernible) with Dr. Fishback (phonetic). There's
11 a laudatory chrono dated June 1st, 2005 for his good
12 work while assigned to the central clothing ward as an
13 assistant tailor written by the supervisor,
14 (indiscernible) supervisor. NA (indiscernible) and AA
15 and (indiscernible). January 24, 2005, Pushing Basics
16 class. He completed a twelve-week course with that.
17 Chaplain Medsey (phonetic). And then I go to his
18 disciplinary history. He has only two 115s, the last
19 being in 1989. No 128(a)s. No gang affiliation
20 noted. And we're going to go to the psychiatric
21 report, dated April 29, 2005, by Dr. Steward, S as in
22 Sam -T as in Tom -E as in Edward -W-A-R-D as in David,
23 Clinical Psychologist at CTF. Diagnostic impressions,
24 Axis One: No contributory clinical disorder. Axis
25 Two: No contributory personality disorder. Axis
26 Three: No contributory physical disorder. Axis Four:
27 Incarceration. Axis Five: GAF of 90. Total